

1. The GNSO should be commended for its efforts in moving forward with this initiative to provide a more predictable, transparent, equitable, and inclusive process for the addition of new TLDs to the root. I submit these initial comments to the draft report, although it is my intention to release a white paper in advance of the Amsterdam consultation that will propose a potential new TLD implementation framework.

Question #1

2. “After reading the Initial Report, are there any other selection criteria which may be helpful for a new top level domain application round?”

Answer #1

3. Given the current gTLD paradigm of Unsponsored Restrictive; Unsponsored Unrestrictive; Sponsored (2000), Sponsored (2003) and legacy gTLDs (.INT, .EDU, .GOV and .MIL), there is the potential for a great divergence on the type of sponsorship/community criteria needed in a selection process. As discussed in greater detail in Question 7 below, given the current patchwork nature of the current gTLD paradigm, it would be prudent to consider a new paradigm construct of the gTLD space as part of this process.
4. As noted in Paul Twomey’s 4-May-2006 communication to the GAC:

The skills needed by members of the sponsorship evaluation team (“Sponsorship Evaluation Team”) and other issues evaluation team were, however, considerably less concrete. The skills and expertise needed to determine whether or not an sTLD proposal meets the sponsorship criteria do not correspond neatly with any particular discipline or profession.
5. If a new paradigm construct for the gTLD space is approved, the need for more clearly enumerated (aka more concrete) criteria are needed to promote a more predictable, transparent, equitable, and inclusive process for the selection of new TLDs to add to the root.

Question #2

6. “Thinking about the issue of application fees for any new top level domain application, is there merit in graduated application fees to assist applicants?”

Answer #2

7. Yes, however, any graduation of fees must begin with ICANN recovering its actual costs (“cost neutral”). In connection with any fee structure it is beneficial to look at the historic fees imposed by ICANN in connection with new TLD selection processes, as well as existing TLD rebid processes.
8. In the 2000 new TLD proof of concept round, ICANN charged a non-refundable \$50,000 application fee¹. In connection with the .ORG RFP during 2002, ICANN charged an initial non-refundable \$35,000 examination fee, with a \$6,000 refund². In the 2003 sTLD round, ICANN charged a non-refundable \$45,000 examination fee³. In connection with the 2003 .NET RFP, ICANN charged a \$200,000 application fee with a \$100,000 to \$150,000 refund to unsuccessful applicants depending upon the total number of actual applicants⁴. However, it is interesting to note the economy of scale in connection with the 2000 proof of concept round in which there were excess funds collected that were later allocated toward the New TLD Evaluation report.⁵
9. Based upon my observations and experiences as an ICANN Board member during the 2003 sTLD selection process, the \$45,000 application fee was not inline with the actual expenses that ICANN and the outside expert consultants incurred, this was particularly true in connection with select applications.
10. At the Wellington ICANN regional meeting there was a discussion⁶ during the Operational Planning session about the application fee for the next round of TLDs

¹ <http://www.icann.org/tlds/new-tld-application-instructions-15aug00.htm>

² <http://www.icann.org/tlds/org/transmittal.htm>

³ <http://www.icann.org/tlds/new-stld-rfp/new-stld-application-parta-15dec03.htm>

⁴ <http://www.icann.org/tlds/dotnet-reassignment/net-rfp-final-10dec04.pdf>

⁵ <http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>

⁶ <http://www.icann.org/meetings/wellington/captioning-opplan-28mar06.htm>

- being in the \$250,000 range. Although circumstances might arise where the expenses in connection with a specific TLD application could approach the \$250,000 range, the imposition of such a fee for the majority of applicants would represent a barrier to entry.
11. If ICANN were to impose an application fee substantially higher than either the 2000 or 2003 rounds to cover potential cost overruns, there should be some type of refund mechanisms in place if these actual overruns are not incurred, or if the applicant decides to withdraw the application after a preliminary assessment by ICANN.
 12. ICANN should also considering allowing applicants to pay an expedited handling fee to speed the review of their application, although this would in no way impact the minimum public notice and comment periods for the broader Internet community.
 13. ICANN should also consider creating a fund from excess fees associated with expedited handling requests, or any type of auction processes, to facilitate qualified applications from developing countries that would otherwise not be able to pay the standard fee.

Question #3

14. "Taking into account the experiences from the 2000 and 2004 round of new top level domains, do you have further comments to make about streamlining the application process?"

Answer #3

15. At first blush there seems to be a disconnect between the 2000 proof of concept round which analyzed forty-four (44) applications during an approximately six week period, and the 2004 round of ten (10) sTLD applications which has spanned a period of several years. Obviously from a business perspective, future

applicants need to know if the new TLD selection process will be one measured in units of months or years.

16. Any attempts to streamline the TLD selection process must take into account potential objections from the Government Advisory Committee (GAC) regarding potential public policy considerations. Failure to account for this scenario could potential undermine the work of the GNSO.
17. It is useful to analyze some of the objections raised by the GAC in connection with the last sTLD round where they cited a lack of information in connection with the status of certain applications, as well as timely access to the evaluator's reports.
18. Unlike the 2000 proof of concept round, where each applicant was provided the opportunity during the ICANN regional meeting in Los Angeles to make a public presentation, neither the 2004 sTLD applicants, nor the ICANN community, had that benefit this time around. If such a presentation would be incorporated into the new TLD evaluation process, such presentation should not occur until after ICANN has had the opportunity to conduct a preliminary review of the application. Such preliminary review should be made available for public comment at least several weeks (ideally between four and six) prior to the regional ICANN meeting where the applicant will be making their public presentation. The scheduling of any presentation should take into account existing GAC meeting commitments to prevent any conflicts.
19. By providing the public access to the preliminary report of each applicant, as well as allowing each applicant to publicly address any potential concerns in connection with their application advances the principles of predictability, transparency, equality, and inclusiveness.
20. Historically the public comment period in connection with TLD applications has lasted a period of weeks. Given the potential magnitude and importance of adding new TLDs into the root, a more substantial comment period should be provided. This lengthened comment period will also provide stakeholders in potential impacted communities to submit comments, and prevent the scenario where a public comment period might overlap with certain holiday periods. The addition

of a TLD to the root should be based on the merit underlying the application, more than the strategic timing of when an application was submitted and when the public comment period commenced.

Question #4

21. "Thinking about ICANN's responsibility to ensure competition in registry services operation, do you have any additional comments about how to encourage applications which would serve needs which are not met by the existing top level domains?"

Answer #4

22. Ensuring competition in registry services is a fundamental principle underlying the continued growth of the name space. However, it is important that people do not measure competition purely in terms of the economic success of a registry's operations. Many of the reviews involving the 2000 proof of concept have focused on the small volumes of domain name registration and therefore concluded that these launches were not successful.
23. To illustrate that there is not a direct correlation to the size of a TLD's zone file and its corresponding success/popularity, .EDU is the perfect example. The .EDU TLD has been in the root since 1985, and currently has over 7,700 domain name registered. However, notwithstanding this rather modest volume of registrations, there are currently almost 2.8 BILLION pages indexed within Google's database under the .EDU TLD.
24. Another example of a small volume TLD making an impact on its community is the recent addition of .CAT to the root. Although .CAT has not yet exceeded 20,000 registrations, it has over 3 million web pages indexed within Google's database. This number of web pages indexed exceeds all sTLDs from both the 2000 and 2004 rounds.

25. Another equally important aspect of competition is ensuring that all business models (for profit and not-for-profit) are provided for in any TLD selection process. Therefore, as noted above, ICANN should explore means to help subsidize qualified applications from any funds collected from expedited handling fees or auction proceeds. The process for determining the criteria for those applicants eligible for any type of subsidize should be developed by the ICANN community.
26. Given that any funds to help subsidize these applications will not be available until after the initial round of TLD applicants, the development of this criteria need not be finalized immediately.
27. With regard to competition, it is also important to consider existing ICANN's requirements that registries only use ICANN accredited registrars to provide domain name registration services to registrants.
28. Since 1999, the ICANN Registrar accreditation model has helped promote competition, and lower consumer costs. Although ICANN Registrars must continue to play a vital role in the future of gTLD domain name registration services, an absolute require to use registrars in every TLD might not be scalable.
29. For example if there was to be a major ISP that sought to apply for a TLD, one needs to question whether registrars are needed in this business model, as the ISP knows each of its customers and currently has a contractual relationship with each one. The mandated use of a registrar distribution channel in this scenario is questionable.
30. The mandatory use of registrars in smaller TLDs below some agreed upon threshold of registered names (i.e. 25,000) may also unreasonably place a burden on a smaller registry operator.
31. Should ICANN ever consider allowing a registry to provide any type of direct domain name registrations services, this needs to be closely monitored with adequate safeguards in place to ensure that the registry operator does not improperly abuse its sole source contract.

Question #5

32. “Looking closely at the technical selection criteria section of the Report, are there any further comments which would assist with identifying appropriate base line technical criteria for new applications?”

Answer #5

33. Most of the comments with regard to this question have dealt with the need to provide a separate accreditation process for back end registry infrastructure providers to allow potential TLD applicant more choice than the current handful of companies providing these services. Although competition is important at all levels of the domain name marketplace, a much more important technical issue that needs further discussion are appropriate safeguards to minimize the impact of registrants and Internet users in the event of a registry failure.
34. A list of proposed safeguards to minimize any negative impacts in the event of a registry failure will be incorporated in the proposed white paper.

Question #6

35. “Do you have any further comment to make on the use of the first come first served system for processing applications and then whether auctions or lotteries are appropriate ways of resolving competition between applications?”

Answer #6

36. First come first serve is preferred method of allocation, however, as discussed below in question seven, the use of an auction model may be appropriate in connection with certain classes of TLDs.

37. However, in the event that multiple applications are submitted for the same/similar string, a comparative analysis should be undertaken to select the most qualified applicant.

Question #7

38. 'Do you have any further views on the kinds of new TLDs that might be encouraged? Specifically, do members of the community expect the existing differentiation between sponsored, generic, chartered and open TLDs to remain?'

Answer #7

39. The current gTLD paradigm of Unsponsored Restrictive (.BIZ, .NAME, and .PRO); Unsponsored Unrestrictive (.COM, .NET, .ORG and .INFO); Sponsored (2000 - .MUSEUM, .COOP and .AERO), Sponsored (2003 - .TRAVEL, .JOBS, .MOBI, and .CAT) and legacy gTLDs (.INT, .EDU, .GOV and .MIL), does not scale in connection with the continued expansion of the root
40. As noted by several stakeholders, a number of the recently selected sTLDs should have been more properly characterized as gTLD given the sheer magnitude and ambiguity of the proposed "communities."
41. Further reinforcing the non-scalability of the current paradigm is the position of certain constituencies within the GNSO that only sponsored TLDs should be added to the root.
42. Should ICANN adopt a sTLD only approach toward the continued expansion of the name space, it will only lead to more applicants attempting to fit a square peg into a round hole, thus undermining the principles of predictability which is so important to this process. Moreover, any attempts by ICANN to adopt sTLDs only may unfairly benefit the existing unsponsored registry operators.
43. Therefore, a new paradigm must be proposed for the gTLD space which allows for meaningful expansion and competition, while at the same time taking into

- account the strong preference for the concept of sponsored/chartered TLDs as expressed by a portion of the community.
44. The proposed new paradigm⁷ is one based upon the level of involvement that the registry operator exercises in connection with reviewing the registrant's qualifications. For the purposes of this discussion, a registry would fall into one of either two categories: **Registrant Verified** – where the registry operator verifies the qualifications⁸ of the registrant prior to the domain name being added to the zone (a.k.a. “going live”) and **Registrant Unverified** – where the registry operator undertakes no prescreening of qualifications involving the registrant⁹.
 45. For purposes of this discussion. The existing gTLDs would be classified as Registrant Verified based upon the screening protocols by the registry operator in connection with the registrants: .MUSEUM, .COOP, .AERO, .TRAVEL, .JOBS, and .CAT, whereas the following existing gTLDs would be classified as Registrant Unverified based upon the lack screening protocols by the registry operator prior to registration: .COM, .NET, .ORG, .INFO, .BIZ, .NAME, .PRO, and .MOBI.
 46. It is also useful to note that all legacy gTLDs (.GOV, .EDU, .MIL, .INT and .ARPA) would all qualify as Registrant Verified.
 47. Although many in the community have been strong advocates of sponsored TLDs because they believed they represented a minimal risk for abusive registrations, the sheer magnitude of some of the recently approved sponsored communities with potential registrants numbering in the billions serious calls into question their initial assumption.
 48. Under this new proposed paradigm, there would be no limit to the number of Registrant Verified TLDs that ICANN would process. However, in connection with Registrant Unverified TLDs, ICANN would agree advance to allocate a set number of these TLDs over a given period of time, i.e. ten (10) Registrant

⁷ This new paradigm is not intended, nor should it, adversely impact any contractual relationships between existing registry operators and ICANN.

⁸ The use of the term “qualifications” in connection with a Registrant Verified TLD implies that there is a defined community as set forth in TLD's charter.

⁹ Because there would be no charter in a Registrant Unverified TLD, this could permit TLDs to be added which were not clearly differentiated from existing name space.

Unverified TLDs over a five (5) year period of time. Given the scarcity of these Registrant Unverified TLDs, ICANN could use an auction or lottery mechanism¹⁰.

49. Given the potential for public policy concerns by the GAC, all potential applicants/bidders would have to pay a fee to allow ICANN to pre-screen the application prior to active bidding.
50. This auction process would also be open to applicants that would wish to apply for a single letter TLD, provided that this current policy development process has not identify any technical problems with these type of strings.

¹⁰ Although a lottery mechanism may initially appear more equitable than an auction process that potentially favors deep-pocket applicants, the recent activities by certain business entities to seek multiple ICANN registrar accreditations to bolster their chances in the deleting domain name market demonstrate the potential to game any type of lottery allocation process. An auction process is far more open, transparent, cost efficient, and less subject to gaming by potential applicants.